IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.51 of 1990
Date of decision: 30.10.2006

Commissioner of income Tax, Haryana, Rohtak

....Petitioner

versus

M/s. Markanda Vanaspati Mills Limited Shahabad Markanda.

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Yogesh Putney, Advocate, for the revenue.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Delhi Bench 'E', New Delhi (for short, 'the Tribunal') arising out of its order dated 25.4.1989 in ITA No.3280/Del./1986, for the assessment year 1981-82:-

> "Whether on the facts and in the circumstances of the case and on a correct and true interpretation of Section 41(1) of the Income Tax Act, 1961, the Appellate Tribunal erred in law in holding that the balance which remained outstanding in the sales tax account after the payment of sales tax assessed did not amount to any allowance or deduction and that they could not be validly brought to tax under section 41(1) of the Income Tax Act, 1961 and therefore, the order of the assessing officer could not be set aside by the learned Commissioner under Section 263?"

The assessee was engaged in the sale of Vanaspati and during the previous years relevant to the assessment years 1978-79 and 1979-80, the assessee collected sales tax and Central Sales Tax and credited the same to a separate account. The amounts so collected were later found to be in excess of the amounts payable towards the sales tax. The assessee transferred the said amounts to the suspense account but did not credit the same to P&L account. This fact was not taken note of by the Assessing

Officer. The CIT(A) initiated proceedings under section 263 of the Income Tax Act, 1961 (for short, 'the Act') on the ground that excess amount in the sale tax account ought to be treated as income of the assessee. After hearing the assesee, income of the assessee was accordingly enhanced.

The Tribunal accepted the claim of the assessee and held that Section 41(1) of the Act was attracted only for loss, expenditure or trading liability of the assessee and not for sales tax liability. No fresh income was received by the assessee and mere cessation of liability during the previous year when the same was not in respect of any allowance or deduction could not be treated as income under section 41(1) of the Act.

We have heard learned counsel for the revenue.

In **Chowringhee Sales Bureau P. Limited v. CIT**, (1973) 87 ITR 542, the matter was considered by the Hon'ble Supreme Court and it was held that the amount collected as sales tax formed part of trading or business receipt and if the said amount was not returned to the owner of the goods nor deposited with the department, the amount will be treated as deemed income of the assessee, notwithstanding the fact that the amount was not shown as trading receipt in the accounts books. Same view has also been taken by the Hon'ble Supreme Court in **Chief Commissioner of income tax v. Kesaria Tea Co. Limited,** (2002) 254 ITR 434, **Polyflex (India) Pvt. Limited v. CIT,** (2002) 257 ITR 343 and **Sinclair Murray and Co. Pv.Limited v. CIT**, (1974) 97 ITR 615. This view has also been followed by the Gujarat High Court in **Motilal Ambaidas v. CIT,** (1977) 108 ITR 136 and **CIT v. Bharat Iron and Steel Industries**, (1993) 199 ITR 67. The said decisions were also followed by the Rajasthan High Court in **Wolkem (P) Limited v. CIT,** (2003) 259 ITR 430.

We have also dealt with the issue in ITR No.12 of 1988 (**The Commissioner of Income Tax, Jalandhar v. M/s Modern Farm Services, Bathinda)**, decided on 18.10.2006, wherein it was observed:-

> "In **CIT v. TV Sundaram Iyengar and Sons Limited,** (1996) 222 ITR 344, following question was considered by the Hon'ble Supreme Court:-
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> > "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in deleting the addition made by the Income

> Tax Officer representing unclaimed sundry credit balances written back to the profit and loss account by the assessee during the previous year relevant for the assessment year under consideration?"

After referring to decisions reported in **Morley (HM Inspector of Taxes) v. Tattersall,** (1939) 7 ITR 316 (CA), which was explained in subsequent judgment in **Jay's The Jewellers Limited v. IRC** (1947) 29 TC 274 (KB), it was held that merely because the amount when received was not income, will not mean that the amount could not be treated as income later. Reference was also made to decisions dealing with different situation where the amount when received was not income but was treated as income later on principle, which has been enacted in Section 41 of the Act. It was observed:-

> "....But, where a new asset came into being automatically by operation of law, commonsense demanded that the amount should be entered in the profit and loss account for the year and be treated as taxable income. In other words, the principle appears to be that if an amount is received in the course of trading transaction, even though it is not taxable in the year of receipt as being of revenue character, the amount changes its character when the amount becomes the assessee's own money because of limitation or by any other statutory or contractual right. When such a thing happens, commonsense demands that the amount should be treated as income of the assessee."

Plea of the assessee in the present case that the amount had not been transferred to profit and loss account, did not make a difference on principle. If no liability accrued during the year, the amount could not be kept in suspense account. The same has to be treated as income. It is a different matter that if at any time later, any expenditure is to be incurred on that account, the same can be treated as permissible expenditure.

In **CIT v. Thirumalaiswamy Naidu and Sons,** (1998) 230 ITR 534, the Hon'ble Supreme Court was concerned with the situation where the liability to sales tax was not required to be met. The revenue received on that account was treated as income, though

> the amount was liable to be refunded to the purchasers. It was held that as and when the amount was required to be refunded to the purchasers, the same could be claimed by the assessee as deduction. In **Polyflex (India) Pvt. Limited v. CIT,** (2002) 257 ITR 343, similar view was taken."

Following the view taken in the above decisions, we hold that the amount collected towards sales tax which remained unpaid and un-payable to the department, which was also not refunded to the customers, was liable to be treated as income in the hands of the assessee under section 41(1) of the Act. As and when the amount is refunded to the customers, the same may be claimed as deduction by the assessee in accordance with law.

Accordingly, the question referred is answered in the manner indicated above.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

October 30, 2006 (Rajesh Bindal)
'gs' Judge